

SENATE RULES COMMITTEE SUBSTITUTE FOR  
SENATE BILLS 263 & 296

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

AN ACT

RELATING TO PUBLIC CONTRACTS; REQUIRING PROSPECTIVE CONTRACTORS  
TO REGISTER WITH THE DEPARTMENT OF FINANCE AND ADMINISTRATION;  
REQUIRING DISCLOSURE OF CAMPAIGN CONTRIBUTIONS BY PROSPECTIVE  
STATE AND LOCAL CONTRACTORS AND STATE AND LOCAL CONTRACTORS;  
PROVIDING FOR ON-LINE ACCESS OF DISCLOSURE STATEMENTS AND  
REGISTRATION INFORMATION; REPEALING AND ENACTING SECTIONS OF  
THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. PROSPECTIVE STATE AND LOCAL CONTRACTOR  
REGISTRATION--CAMPAIGN CONTRIBUTION DISCLOSURE AND  
PROHIBITION.--

A. A prospective contractor, prior to entering into  
a state contract with a state agency or a local contract with a  
local public body, shall register with the department of

.177526.6

underscored material = new  
[bracketed material] = delete

1 finance and administration on a form developed by the  
2 department and made available on the department's web site.

3 The prospective contractor shall provide the following  
4 information:

- 5 (1) the name and address of the business;
- 6 (2) the principals of the business;
- 7 (3) any affiliated business entities;
- 8 (4) the name and address of a contact person  
9 for the business; and
- 10 (5) any contracts the contractor currently has  
11 with a state agency or local public body and the amount and  
12 term of the contract.

13 B. A prospective contractor shall update any of the  
14 information required by Subsection A of this section prior to  
15 responding to a solicitation from a state agency or local  
16 public body.

17 C. A prospective state contractor shall disclose  
18 all campaign contributions given by a principal of the  
19 prospective state contractor to a state public officer during  
20 the two years prior to the date the prospective state  
21 contractor responds to a solicitation by a state agency to  
22 enter into a state contract if the total contributions from a  
23 principal to a public officer exceed two hundred fifty dollars  
24 (\$250) over the two-year period.

25 D. A prospective local contractor shall disclose

1 all campaign contributions given by a principal of the  
 2 prospective local contractor to a local public officer during  
 3 the two years prior to the date the prospective local  
 4 contractor responds to a solicitation by a local public body to  
 5 enter into a contract with the local public body if the total  
 6 contributions from a principal to a local public officer exceed  
 7 two hundred fifty dollars (\$250) over the two-year period.

8 E. The disclosure shall indicate the date, the  
 9 amount and the nature of the contribution and the person  
 10 receiving the contribution. Prospective state and local  
 11 contractors shall complete the disclosure statement on-line and  
 12 the department of finance and administration shall post the  
 13 disclosure statements in a searchable format on its web site.

14 F. A principal of a state contractor shall not make  
 15 a contribution to or solicit a contribution for the benefit of  
 16 a state public officer during the pendency of the procurement  
 17 process. A principal of a local contractor shall not make a  
 18 contribution to or solicit a contribution for the benefit of a  
 19 local public officer during the pendency of the procurement  
 20 process.

21 G. If a contractor enters into a contract with a  
 22 state agency or local public body, during the term of the  
 23 contract the contractor shall update the information required  
 24 by this section quarterly. Quarterly updates shall be filed by  
 25 5:00 p.m. on the second Monday in January, April, July and

.177526.6

underscored material = new  
 [bracketed material] = delete

1 October.

2 H. Before awarding or entering into a state or  
3 local contract with a prospective contractor, the appropriate  
4 purchasing agent or contract evaluation committee shall review  
5 the information that the prospective contractor has submitted  
6 and shall certify that the prospective contractor has properly  
7 registered with the department of finance and administration  
8 and submitted the list of contributions required by this  
9 section.

10 I. A solicitation for or proposed award of a  
11 proposed contract may be canceled or a contract that is  
12 executed may be terminated if it is in the best interests of  
13 the state or local public body when a prospective state  
14 contractor or prospective local contractor or a state or local  
15 contractor fails to submit a fully completed disclosure  
16 statement pursuant to this section or makes a contribution  
17 prohibited by Subsection F of this section.

18 J. As used in this section:

19 (1) "contribution" means a gift, subscription,  
20 loan, advance or deposit of money or other thing of value,  
21 including the estimated value of an in-kind contribution, that  
22 is made or received for a political purpose, including payment  
23 of a debt incurred in an election campaign;

24 (2) "local public body" means the governing  
25 authority of a political subdivision of the state;

.177526.6

1 (3) "local contractor" means a person that  
 2 enters into a local contract. "Local contractor" does not  
 3 include a state agency or a political subdivision of the state  
 4 or an employee of a state agency or political subdivision of  
 5 the state, whether full or part-time, in that person's capacity  
 6 as an employee of the state or political subdivision of the  
 7 state;

8 (4) "local public officer" means a person  
 9 elected to an office, or a person appointed to complete a term  
 10 of an elected office, in the political subdivision of the state  
 11 where the local public body is seeking to contract with a local  
 12 contractor;

13 (5) "pendency of the procurement process"  
 14 means the time period commencing on the day of the initial  
 15 solicitation for a state or local contract by the state agency  
 16 or local public body and ending with the award of the contract  
 17 or the cancellation of the solicitation;

18 (6) "principal of a prospective state or local  
 19 contractor" means, in addition to the contractor itself:

20 (a) an owner, officer or director of a  
 21 corporation that is a prospective contractor, a member or  
 22 manager of a limited liability company that is a prospective  
 23 contractor, a partner of a partnership that is a prospective  
 24 contractor or trustee of a trust of a prospective contractor;  
 25 and

.177526.6

underscored material = new  
 [bracketed material] = delete

1 (b) the spouse or a dependent child of a  
2 person described in this paragraph;

3 (7) "prospective state or local contractor"  
4 means a person that submits a bid in response to a bid  
5 solicitation by a state agency or a local public body, or a  
6 proposal in response to a request for proposals or other  
7 solicitation by a state agency or a local public body until the  
8 contract has been entered into. "Prospective state or local  
9 contractor" does not include a state agency or a political  
10 subdivision of the state or an employee of a state agency or  
11 political subdivision of the state, whether full or part-time,  
12 in that person's capacity as an employee of the state or  
13 political subdivision of the state;

14 (8) "state agency" means an office,  
15 department, board, council, commission, institution or other  
16 agency in the executive or legislative branch of state  
17 government, an institution of the state or an instrumentality  
18 of the state;

19 (9) "state contract" or "local contract" means  
20 an agreement or contract with a state agency, or a local public  
21 body in the case of a local contract, having a value of fifty  
22 thousand dollars (\$50,000) or more, or a combination or series  
23 of such agreements or contracts having a value of fifty  
24 thousand dollars (\$50,000) or more in a fiscal year, for:

25 (a) the rendition of services, including

1 professional services;

2 (b) the furnishing of any material,  
3 supplies or equipment;

4 (c) the construction, alteration or  
5 repair of any public building or public work;

6 (d) the acquisition, sale or lease of  
7 any land or building;

8 (e) a licensing arrangement;

9 (f) a grant, loan or loan guarantee; or

10 (g) the purchase of financial securities  
11 or instruments;

12 (10) "state contractor" means a person that  
13 enters into a state contract. "State contractor" does not  
14 include a state agency or a political subdivision of the state  
15 or an employee of a state agency or political subdivision of  
16 the state, whether full or part-time, in that person's capacity  
17 as an employee of the state or political subdivision of the  
18 state; and

19 (11) "state public officer" means a person  
20 elected to an office, or a person appointed to complete a term  
21 of an elected office, in the executive or legislative branch of  
22 state government, a campaign committee established or  
23 controlled by or affiliated with that person or any department  
24 secretary in the executive branch having an active campaign  
25 committee or political committee account.

.177526.6

